Datuk Bandar Kuala Lumpur & Anor v Tan Poh Wah & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCVC-834–12 OF 2016
NANTHA BALAN J
20 MARCH 2018

Land Law — Vacant possession — Claim for — Whether factual matrix showed defendants had no right, title or interest to occupy land belonging to local authority — Whether defendants were squatters — Whether mere fact they occupied land for years, substantially improved the land with their own monies or enjoyed water and electricity supply with tacit acquiescence of authorities did not give them any rights to land

In May 2016, the first plaintiff ('DBKL'), which was the local authority for the Federal Territory of Kuala Lumpur, became the owner of a piece of land ('the land') that was occupied by the defendants. The defendants, who had no right, title or licence to occupy the land, contended that they and their ancestors were relocated to the land about 40 years before DBKL became its owner, by a tin-mining company when it wanted the previous land they were occupying for mining. The defendants also contended that the mining company had promised to secure them land titles but nothing came out of it. Over time, the defendants constructed their own brick and/or wooden houses upon the land and even managed to secure water and electricity supply to their 'village' with the tacit acquiescence of the authorities. Three months after DBKL became the owner of the land, it entered into a sale and purchase agreement and a development agreement with the second plaintiff ('P2') for the latter to buy and develop the land into a housing-cum-commercial project. Both DBKL and P2 regarded the defendants as squatters and when all amicable attempts to get the defendants to move out failed, they filed the instant action for vacant possession of the land besides a declaration that the defendants had no rights, title or interest in the land and an order that they demolish all structures they had built on the land before moving out. The plaintiffs also sought general, aggravated and exemplary damages. Although the defendants maintained that their initial entry onto the land was not illegal and that they had acquired an interest and/or a legitimate expectation and/or equity in the land which the plaintiffs had to acknowledge and satisfy, they did not seek any relief by way of a counterclaim.

Held, allowing the plaintiffs' claim and ordering the defendants to pay P2 the sum of RM43,824 with interest thereon at 5%pa from date of judgment until full realisation:

(1) Although the defendants' initial entry onto the land in the 1970s was not surreptitious or contrived but was facilitated by Chim Lee Mining Co Ltd with the tacit or express acquiescence of the authorities and the utility agencies, the inference that they were squatters was irresistible. There was no other label to describe the defendants other than as squatters as all contemporaneous documentary evidence pointed to the fact that they were squatters. Even during the course of the trial, it became clear that what the defendants actually wanted was to be compensated for vacating the land. They were not claiming ownership of the land. They had abandoned their defence that they had any 'rights, ownership, interest, legitimate expectation and/or equity' with respect to the land (see para 53).

(2) The defendants' plea of proprietary estoppel failed as the important elements of 'representation' or 'assurance' were glaringly missing. Other than the tacit acquiescence of the authorities, including DBKL as the local authority, there was no express representation made or any assurance given to the defendants that they would be given any land or that they could occupy the land in perpetuity. Instead, the defendants (or their predecessors) were in fact told that there was no guarantee that they would be given any land by the government. The fact that the defendants had occupied the land for a long period of time and had substantially improved it and/or might have held a temporary occupation license over the land and/or had spent money to fortify the land or the fact that they had been provided with water and electricity supply did not per se confer them with any rights to the land (see paras 59 & 65).

(3) DBKL had clearly established that it was the undisputed registered owner of the land and was entitled to immediate vacant possession thereof. P2, on the other hand, as the purchaser of the land under the sale and purchase agreement and having paid the requisite deposit, had established that it had the locus standi to file the action against the defendants together with DBKL and that its legal and commercial interests were adversely affected by the continued presence of the defendants on the land (see paras 76–77).

(4) P2 had established that it had suffered out-of-pocket expenses in the sum of RM43,824 (which was not contested by the defendants) due to the delay in the implementation of the development project as a result of the defendants' refusal to vacate. No other damages could be awarded — whether as general, exemplary or aggravated damages — since P2 had not adduced evidence of any other loss or damage it had purportedly incurred (see paras 75 & 79).

[Bahasa Malaysia summary

Pada Mei 2016, plaintif pertama ('DBKL'), yang merupakan pihak berkuasa tempatan bagi Wilayah Persekutuan Kuala Lumpur, telah menjadi pemilik sebidang tanah ('tanah tersebut') yang diduduki oleh defendan-defendan. Defendan-defendan, yang tidak mempunyai hak, hak milik atau lesen untuk menduduki tanah tersebut, menegaskan bahawa merea dan nenek moyang mereka telah dipindahkan ke tanah tersebut lebih kurang 40 tahun sebelum SBKL menjadi pemiliknya oleh syarikat perlombongan timah apabila ia mahukan tanah sebelumnya yang diduduki mereka untuk perlombongan. Defendan-defendan juga menegaskan bahawa syarikat perlombongan itu telah berjanji untuk menjamin mereka hak milik tanah tetapi itu tidak berlaku. Dari masa ke masa, defendan-defendan telah membina rumah-rumah batu dan/atau kayu mereka sendiri atas tanah tersebut dan malah berjaya mendapatkan bekalan air dan elektrik kepada 'kampung' mereka dengan persetujuan tersirat pihak berkuasa. Tiga bulan selepas DBKL menjadi pemilik tanah tersebut, ia memasuki suatu perjanjian jual beli dan perjanjia pembangunan dengan plaintif kedua ('P2') supaya P2 membeli dan membangunkan tanah tersebut menjadi projek perumahan dan komersial. Kedua-dua DBKL dan P2 menganggap P2 sebagai setinggan dan apabila semua percubaan yang baik untuk mendapatkan defendan-defendan keluat gagal, mereka telah memfailkan tindakan ini untuk milikan kosong tanah tersebut selain daripada suatu deklarasi bahawa defendan-defendan tidak mempunyai hak, hak milik atau kepentingan ke atas tanah tersebut dan suatu perintah bahawa mereka meruntuhkan semua struktur yang telah dibina oleh mereka atas tanah tersebut sebelum keluar. Plaintif-plaintif juga memohon ganti rugi am, tambahan dan teladan. Walaupun defendan-defendan menegaskan bahawa kemasukan awal mereka ke atas tanah tersebut tidak menyalahi undang-undang dan bahawa mereka telah memperoleh kepentingan dan/atau jangkaan yang sah dan/atau ekuiti ke atas tanah tersebut yang mana perlu diakui dan dipenuhi oleh plaintif-plaintif, mereka tidak memohon apa-apa relief melalui tuntutan balas.

Diputuskan, membenarkkan tuntutan plaintif-plaintif dan memerintahkan defendan-defendan membayar P2 sejumlah RM43,824 beserta faedah pada kadar 5% setiap tahun dari tarikh penghakiman sehingga penyelesaian sepenuhnya:

(1) Walaupun kemasukan awal defendan-defendan ke atas tanah tersebut pada tahun 1970an tidak secara curi-curi atau dibuat-buat tetapi telah dikendalikan oleh Chim Lee Mining Co Ltd dengan persetujuan tersirat atau nyata daripada pihak berkuasa dan agensi-agensi utiliti, inferens bahawa mereka adalah setinggan sangat menarik. Tiada label lain untuk menggambarkan defendan selain sebagai setinggan kerana kesemua bukti dokumentari membuktikan fakta bahawa mereka adalah penduduk setinggan. Malah semasa perbicaraan, ia menjadi jelas bahawa

apa yang defendan sebenarnya mahu adalah untuk dibayar bagi mengosongkan tanah tersebut. Mereka tidak menuntut pemilikan tanah tersebut. Mereka tidak menggunakan pembelaan mereka bahawa mereka mempunyai 'rights, ownership, interest, legitimate expectation and/or equity' berkaitan tanah tersebut (lihat perenggan 53).

(2) Rayuan defendan-defendan untuk estopel hak milik gagal kerana elemen-elemen penting 'representasi' atau 'jaminan' tiada langsung. Selain daripada persetujuan tersirat pihak berkuasa, termasuk DBKL sebagai pihak berkuasa tempatan, tiada representasi secara nyata telah dibuat atau apa-apa jaminan diberikan kepada defendan-defendan babhawa mereka akan diberikan apa-apa tanah atau bahawa mereka boleh menduduki tanah itu selama-lamanya. Sebaliknya, defendan-defendan (atau pendahulu mereka) pada hakikatnya telah memberitahu bahawa tidak ada jaminan yanga mereka akan diberikan apa-apa tanah oleh kerajaan. Hakikat bahawa defendan-defendan telah menduduki tanah tersebut untuk tempoh masa yang lama dan telah dengan ketara membaikinya dan/atau mungkin telah memegang *temporary occupation license* ke atas tanah tersebut dan/atau telah membelanjakan wang untuk mengukuhkan tanah terseut atau hakikat bahawa mereka telah diberikan bekalan air dan elektrik tidak secara per se memberikan mereka apa-apa hak ke atas tanah tersebut (lihat perenggan 59 & 65).

(3) DBKL jelas telah membuktikan bahawa ia adalah pemilik berdaftar yang tidak dipertikaikan ke atas tanah tersebut dan berhak untuk dengan segera mengosongkan milikan tanah tersebut. P2, sebaliknya, sebagai pembeli tanah tersebut di bawah perjanjian jual beli dan setelah membayar deposit yang diperlukan, telah membuktikan abhawa ia mempunyai locus standi untuk memfailkan tindakan terhadap defendan-defendan bersama DBKL dan bahawa kepentingan komersial dan undang-undangnya telah terjejas teruk oleh kewujudan berterusan defendan-defendan atas tanah tersebut (lihat perenggan 76–77).

(4) P2 telah membuktikan bahawa ia telah mengeluarkan perbelanjaan sendiri berjumlah RM43,824 (yang tidak dipertikaikan oleh defendan) disebabkan kelewatan dalam pelaksanaan projek pembangunan akibat daripada keengganan defendan-defendan untuk dikosongkan. Tiada ganti rugi lain boleh diberikan — sama ada sebagai ganti rugi am, ganti rugi teladan atau ganti rugi teruk — memandangkan P2 tidak mengemukakan keterangan berhubung apa-apa kerugian atau kerosakan lain yang dikatakan telah ditanggung (lihat perenggan 75 & 79).]

Notes

For cases on claim for vacant posession, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5969–5975.

Cases referred to

Cahaya Ideal (M) Sdn Bhd v Orang2 Yg Mengenali Diri Sbg 'Ponga' (Poongavanam a/l Vadivelu) & Ors [1999] MLJU 125, HC (refd)
Holee Holdings (M) Sdn Bhd v Chai Him & Ors [1997] 4 MLJ 601, HC (refd)
Hong Lim Timber Industries Sdn Bhd v Pentadbir Tanah Pejabat Daerah dan Tanah Daerah Timur Laut Pulau Pinang [2017] MLJU 408, HC (refd)
Kabra Holdings Sdn Bhd v Ahmad Shahlan & Ors & Other Persons Unknown [1992] 2 CLJ Rep 609, HC (refd)
Lee Loy & Ors v Poh Kam Sang & Anor [2018] 3 MLJ 240, CA (refd)
Mcphail v Persons, Names Unknown [1973] Ch 447, CA (refd)
Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (refd)
Sentul Murni Sdn Bhd v Ahmad Amiruddin Bin Kamaruddin & Ors [2000] 4 MLJ 503, CA (refd)
Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors [1998] MLJU 378, HC (refd)
Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313, FC (refd)
Thorner v Major and others [2009] 3 All ER 945, HL (refd)
Tjia Swan Nio v Ng Nyuk Moi & Ors [1992] 2 MLJ 666; [1992] 3 CLJ Rep 713; [1992] 4 CLJ 2200, HC (refd)

Legislation referred to

Federal Capital Act 1960 s 5
Federal Territory (Planning) Act 1982
National Land Code ss 48, 65, 66, 67, 68, 69, 89, 340, 340(2), 341
Planning (Development) Rules 1970 r 5
Street, Drainage and Building Act 1974 ss 70(1), 72

Rajesh Sharma (Amrit Singh with him) (Amrit & Co) for the first plaintiff.
Cheong Su Yin (Cheong Su Yin & Co) for the second plaintiff.
Tan Teck Seng (TT Seng & Partners) for the defendants.

Nantha Balan J:

INTRODUCTION

[1] These are my grounds after a full trial. This is essentially an action by the registered owner of a parcel of land together with a developer with whom the registered owner had entered into a development agreement to develop the land. However, the land was/is occupied by dwellers (described by the plaintiffs as squatters), who have refused to move out and give vacant possession. The plaintiffs are seeking orders of vacant possession and an order to allow the buildings and structures on the land to demolished. The plaintiffs also seek general, aggravated and exemplary damages. The defendants did not file any counterclaim to seek any legal remedies or equitable reliefs. The plaintiffs called

two witnesses and the defendants called four witnesses.

[2] At the outset, it is necessary to mention that during the pre-trial case management, there was no request for the trial to be bifurcated into liability and quantum stages. Indeed, it was clear all along that parties are to establish both liability and quantum during the trial. The trial (on liability and quantum) was completed on 27 December 2017. I will start with the plaintiffs' synopsis.

THE PROPOSED DEVELOPMENT

[3] The first plaintiff ('P1') is the local authority for the Federal Territory of Kuala Lumpur and is (with effect from 18 May 2016) the registered owner of a parcel of land in Kepong, Kuala Lumpur. They entered into a sale and purchase agreement with the second plaintiff ('P2') for a mixed development project to be undertaken on the parcel of land. The proposed development included the construction of affordable housing which was to priced and sold as per conditions stipulated by P1 and as per the Government of Malaysia's affordable housing policy. However, P2 was not able to commence the development project due to the presence of houses/structures on the land. These houses and structures were erected on the land since around 1979. The defendants are the owners/occupiers of these houses/structures. The houses/structures are not homogenous and some are wooden structures whilst others are made of brick and wood. Others houses/structures are completely made of brick.

[4] The sult was filed for a declaration that the defendants have no proprietary rights of ownership in or over the land and that they are occupying the land without the consent or permission of the plaintiffs, and are *squatters.* The plaintiffs are seeking an order of vacant possession so as to evict the defendants and for the building structures to be demolished. The plaintiffs are also seeking general, aggravated and exemplary damages against the defendants.

THE LAND

[5] The land in question was formerly known as Lot 80782, Kampung Chiam Lee, Mukim Batu, Kuala Lumpur. The present title details of the land are: HS(D) 120095, PT26880, Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan KL, measuring approximately 59073 sqmt. I shall refer to it interchangeably as 'Lot 80782' or 'the land'. P1 is the local authority for Wilayah Persekutuan Kuala Lumpur and is a body corporate pursuant to s 5 of the Federal Capital Act 1960 (Revised 1977) (Act 190) and they are the registered owner of the land. The defendants are the present occupiers of these

houses. Many of the defendants are descendants of the original persons who built the houses on the land. The title to the land is not and was never registered in the names of any of the defendants. The defendants have been described in these proceedings as 'squatters'.

[6] The land was alienated to P1 on *18 May 2016* (p 1–3 B). P1 entered into a sale and purchase agreement dated 30 August 2016 with P2 ('the SPA') whereby P1 had agreed to sell and P2 had agreed to purchase the said land. The purpose of the purchase of the said land by P2 from P1 is to develop the 'Projek Rumah Mampu Milik Wilayah Persekutuan' ('the housing project'). Apart from the housing project, P2 would also undertake commercial projects on the land. But the affordable housing scheme and the project as a whole has not taken off, because of the presence of the houses and other structures on the land. The plaintiff therefore want the defendants evicted from the land. The plaintiff also seek an order for the demolition of all the structures which are situated on the land.

NOTICE TO VACATE

[7] P2 paid the sum of RM4,019,400 to P1 being 10% of the purchase price for the land. P2 claims that pending completion fo the SPA, they are benefical owners of the land. P1 had issued a notice dated 6 June 2016 to the defendants pursuant to s 72 of the Street, Drainage and Building Act 1974 for the defendants to vacate the land and to demolish the structures built on the land within seven days from the date of receipt of the said notice ie on/before 14 June 2016 (p 119 B).

[8] Section 72 of the Street, Drainage and Building Act 1974 reads as:

> *72 Demolition or removal of unauthorized building*
>
> (1) Where the local authority is satisfied that a building has been erected or is in the course of erection or is about to be erected in contravention of section 70 or, if such building has been erected prior to the coming into force of this Act, in contravention of any law then in force relating to buildings and in respect of which building approval under any law was not given subsequently, *the local authority may by notice served on the owner of the land* require him to do any one or more of the following acts:
>
> (a) to abstain from commencing or proceeding with the erection of such building;
>
> (b) to demolish such building within such time as the local authority may specify; and
>
> (c) to take steps as may be ordered by the local authority.
>
> (2) Where the owner is unable to demolish such building within the time specified

in the notice, the owner may request the local authority to carry out the requirements of the notice.

(3) No request by the owner made under subsection (2) shall absolve the owner from his liability under this section unless he makes the request within the time specified for him to demolish such building and unless within the same period of time he —

(a) deposits with the local authority such sum which the local authority thinks is sufficient to cover the costs and expenses of —

(i) demolishing such building;

(ii) removal of any movable property found m such building;

(iii) storage of such movable property; and

(iv) any other activities incidental to or arising out of subparagraphs (i), (ii) and (iii);

(b) indemnifies and keeps indemnified the local authority against any claim, damage, loss, action or proceedings that may be brought against the local authority arising out of and incidental to subparagraphs (i), (ii), (iii) and (iv); and

(c) notwithstanding any sum paid under paragrapah (a), pays the local authority a further sum which may be prescribed by the State Authority, for relocation purposes.

(4) Any person who fails to comply with the requirements of the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty ringgit for every day that the offence is continued after expiry of the period specified in the notice.

(5) Where the owner fai ls to comply with the requirements of the notice, the local authority may do any or all of the acts required by the notice and notwithstanding the owner's liability to pay any fine under subsection (4), the owner shall pay such sums to the local authority as may be required under subsection (3) and shall be deemed to have indemnified the local authority in carrying out the terms of the notice as if he had requested the local authority to do so.

Notice before demolition

(6) Where the building is to be demolished by the local authority, it shall give at least thirty days notice to the occupants of the building requiring them to vacate the building and the local authority may after the lapse of the period enter the building and remove any person or movable property found therein.

(7) Any movable property removed pursuant to subsection (6) may be taken to a suitable place and there to remain at the risk of the owner and may within a period of one month from the date of the removal be claimed by any person who furnishes evidence to the satisfaction of the local authority that he is the owner and if there be no claim shall be disposed of in the manner specified in Section 116.

(8) A certificate by the local authority stating the sum required to be paid by the

owner under subsections (2) and (5) shall be conclusive proof of the sums due and shall not be subject to any appeal or review in any court.

[9] There is no doubt that the houses and other structures which were built on the land, were done without planning approval or permission of P1 *(qua* local authority). But all along P1 had turned a 'Nelsonianeye' (blind eye) to the defendants' breach of planning regulations. At any rate, eventually P1 had issued another notice dated 16 June 2016 pursuant to s 70(1) of the Street, Drainage and Building Act 1974 for the defendants to vacate the land and to demolish the illegal structures built on the land within 30 days from the date of receipt of the said notice ie on/before 17 July 2016 (p 120 B).The defendants are still occupying the land and have yet to demolish the structures erected by them. Section 70(1) of the Street, Drainage and Building Act 1974 reads as:

70 Notice of new buildings

(1) No person shall erect any building without the pnor written permission of the local authority.

P2'S MEETING WITH THE DEFENDANTS

[10] Sometime in 2015, P2 had meetings with some of the occupants on the land based on a list provided by P1 (pp 10–13 B2 and PW2A pp 7–8 Q&A 7). P2 had initiated discussions with the defendants to explore the possibility for the defendants to vacate the land amicably to enable P2 to commence developments works on the land (PW2A pp 7–8 Q&A 7).

[11] P1 and P2 had attended a few meeting with the occupants on the land on 27 December 2015, 10 January 2016, 23 February 2016 and on 28 February 2016 including the defendants — (see PW2A pp 7–8 Q&A 7). Some of the families vacated the land. P1 and P2 had a few more meetings on 26 May 2016, 1 July 2016, 26 July 2016, 23 August 2016 and 1 September 2016 with the remaining occupants who refused to deliver vacant possession of the land. As there was no agreement reached between P1/P2 and the remaining occupants who refused to deliver vacant possession of the land to P1 and/or P2, the plaintiffs had no other alternative but to initiate the present suit — (see PW2A pp 8–9 Q&A 8). The plaintiffs claim that at all material times, the defendants are squatters who have occupied the land illegally and/or without the consent of P1 as the registered owner of the land. Several discussion/meeting sessions were attempted by the plaintiffs to make the defendants vacate from the land, but to no avail.

[12] As a result of the failure on the part of the defendants to vacate the land, the plaintiffs through their solicitors, served an eviction notice on the defendants and also demanded that the defendants do move out from the land

within fourteen days vide letter dated 20 October 2016.

[13] Nevertheless, the defendants have failed and/or refused and/or neglected to respond and have continued to occupy the land wrongfully and illegally. The plaintiffs therefore seek the reliefs as specified in para 15 of the amended statement of claim ('ASOC') against the defendants, namely:

(a) Satu deklarasi bahawa Defendan-defendan sama ada melalui mereka sendiri atau ejen-ejen, pekerja-pekerja dan/atau wakil-wakil mereka tidak mempunyai hak, hakmilik dan/atau kepentingan yang mempunyai prioriti terhadap Plaintif-Plaintif;

~~(a)~~ (b) Defendan-defendan dikehendaki untuk mengosongkan dan/atau menyerahkan milikan kosong tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur kepada Plaintif-Plaintif dalam tempoh empat belas (14) hari dari tarikh perintah Mahkamah ini;

(c) Defendan-Defendan dikehendaki untuk merobohkan dan membuang semua struktur tidak boleh alih dan boleh alih yang berada di atas tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur dalam tempoh empat belas (14) hari dari tarikh perintah Mahkamah ini;

(d) Sekiranya Defendan-Defendan gagal. enggan dan/atau secara cuai tidak mengosongkan dan/atau menyerahkan milikan kosong tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur kepada Plaintif-Plaintif dan merobohkan dan membuang semua struktur tidak boleh alih dan boleh alih yang berada di atas tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur dalam tempoh empat belas (14) hari, Plaintif-Plaintif dibenarkan untuk melaksanakannva secara sendiri di mana segala kos tersebut akan ditanggung oleh Defendan-Defendan;

(e) Satu perintah bahawa Defendan-Defendan sama ada melalui mereka sendiri atau pekerja-pekerja dan atau ejen-ejen mereka dihalang daripada secara tidak sah menghuni tanah tersebut atau mana-mana bahagian tanah tersebut atau sebaliknya menghalang, menyekat dan/atau menggangu apa-apa kerja Plaintif-Plaintif atau ejen yang diberi kuasa Plaintif-Plaintif atas tanah tersebut;

(f) Satu perintah bahawa Defendan, sama ada melalui mereka sendiri atau pekerja-pekerja dan/atau ejen-ejen mereka dihalang daripada memasuki apa-apa kaveat atau sebaliknya menghalang, menyekat dan/atau menggangu apa-apa urusan tanah tersebut;

~~(b)~~ (g) Gantirugi am yang akan ditaksirkan oleh Mahkamah Yang Mulia ini,

~~(c)~~ (h) Gantirugi teladan;

~~(d)~~ (i) Kos tindakan ini; dan

~~(f)~~ (k) Apa-apa perintah, relif atau arahan yang dianggap patut dan sesuai oleh Mahkamah yang Mulia ini.

THE DEFENDANTS' SYNOPSIS

[14] According to the defendants' narrative, in 1940s and 1950s, certain settlers cleared a parcel of land on land known as Lot 67619 and built their homes. The area is presently known as Taman Layang-Layang, Metropolitan Kepong. Around 1969, some of the settlers and/or the settlers' descendants and/or residents of Lot 67619 were issued with temporary occupation license ('TOL'). Around 1970s, a business entity or a company known as Chim Lee Tin Mining Co Ltd ('Chim Lee Mining Co Ltd') obtained a mining lease to carry out tin mining on Lot 67619.

RELOCATION

[15] Consequently, around 1979, Chim Lee Mining Co Ltd wanted to commence tin mining operations on Lot 67619. Thus, Chim Lee Mining Co Ltd negotiated with the settlers and/or the settlers' descendants and/or residents of Lot 67619 and offered housing sites at a different part of the mining lease area where Chim Lee Mining Co Ltd had previously carried out tin mining activities. This different part of the land is known as Lot 80782 ('the land').

[16] In this regard it is alleged by the defendants that Chim Lee Niining Co Ltd agreed to provide housing sites and compensation to the settlers and/or their descendants for having to be relocated from Lot 67619 to the land. Chim Lee Mining Co Ltd also paid compensation for each tree planted by the settlers and/or the settlers' descendants and/or residents of Lot 67619.

[17] Thereafter, housing lots were drawn and allocated on 5 September 1979 and the recipients of the housing lots were listed and recorded. The relocated area in Lot 80782 was named as 'Kampung Chim Lee' as a tribute to Chim Lee Mining Co Ltd. This name remains to date.

[18] Thus, the defendants alleged that they are the recipients of the said housing lots and/or descendants of the recipients of the said housing lots and/or obtained their housing from those recipients and/or family members. Some of the original recipients of the housing lots were also employed by Chim Lee Mining Co Ltd.

[19] As such, the defendants claim that they are legitimate residents who lived on the land since 1979 based on the arrangement between Chim Lee Tin Mining Co Ltd and the local government due to mining activities carried out by the company in the defendants' earlier residential land.

[20] The defendants are in actual possession of the land. The housing lots

were not supplied with basic utilities until around 1988. In around 1988, water and electricity were supplied to the houses on the land with the support of the authorities and/or P1.

[21] In this regard, it was emphasised for the defendants that the Ministry of Federal Territories wrote to the Water Supply Department and expressed full support for provision of water supply to the houses located on the land. Applications for electricity supply was made to P1 in their capacity as the local authority. P1 did not object to the same and forwarded the application to the relevant utility provider at that material time.

[22] To date, almost four generations have stayed in Kampung Chim Lee since the relocation in 1979 with full knowledge and/or consent and/or acquiescence of the authorities and/or P1. The defendants and/or residents of the land had built their lives around that area and/or improved the land. Thus, the defendants maintain that they have an interest and/or legitimate expectation and/or an equity that must be satisfied with respect to the land. On 4 January 2016, P1 issued a notice under r 5 of the Planning (Development) Rules 1970 which were made under the Federal Territory (Planning) Act 1982, for the development of Lot 80782.

[23] At that material time, neither P1 nor P2 were the registered proprietor of the land. P1 became the registered proprietor of Lot 80782 on 18 May 2016. Soon thereafter, P2 offered compensation to the defendants to vacate the land. At that material time:

(a) there is a condition that Lot 80782 can only be used for affordable housing; and

(b) there are restrictions in interest whereby Lot 80782 cannot be transferred, leased, or charged without the permission from 'jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur'.

[24] The defendants' representative contacted P1 and requested, inter alia, for particulars of the proposed development as well as particulars of P2 and the terms of the agreement and/or arrangement between the plaintiffs. According to the defendant, these particulars are crucial in determining the rights and obligations of the plaintiffs in the light of the defendants' continued actual possession of Lot 80782. The defendants' representatives also attempted to contact P2 and went to P2's business address at 10–2, Wisma FM Holding, Pekeliling Business Centre, Jalan Pahang Barat 53300 Kuala Lumpur. However, P2 could not be located there. This was highlighted to P1.

[25] Apart from that, the defendants' representatives also sought further information from P1 with regard to, inter alia, *fair compensation* for the

defendants. In this regard, the defendants subsequently discovered that P2 is a mechanical, electrical and building contractor and not a housing developer. The defendants harped on the fact that only a sale and purchase agreement had been entered into between the plaintiffs and only part of the purchase price had been paid by P2 to P1. Furthermore, the condition and restriction of interests with respect to Lot 80782 still remains. As such P2's and/or P1's locus standi to bring this action directly against the defendants and the plaintiffs' entitlement to the reliefs claimed in the ASOC, are disputed by the defendants. It was stressed that P1 issued a notice pursuant to s 72 of the Street, Drainage and Building Act 1974 against the defendants on around 6 June 2016.

[26] It was emphasised that notices under s 72 of the Street, Drainage and Building Act 1974 are meant to be issued to 'owners' as defined in the said Act. Thus, it was contended bv the defendants that P1's issuance of the said notice together with the authorities' and/or P1's acts and/or conduct are explicit and/or implicit acknowledgement and/or recognition of the defendants' interests and/or legitimate expectation and/or equity that must be satisfied with respect to Lot 80782.

[27] The defendants point to the fact that P1 and/or P2 had continued discussions pertaining to, inter alia, compensation with the defendants even after the expiry of the notices.

[28] According to the defendants, P1 and/or P2's continued discussions from the outset regarding compensation due to the defendants are explicit and/or there is an implicit acknowledgement and/or recognition of the defendants' interests and/or legitimate expectation and/or equity that must be satisfied with respect to Lot 80782.

[29] On 9 July 2016, the defendants applied to register Kampung Chim Lee Residents' Association. It was registered as 'Persatuan Penduduk Kampung Chim Lee Kepong' ('the association'). This was done apparently to safeguard the defendants' interest and/or legitimate expectation. On 21 July 2016, the association was registered with the Registrar of Societies.

[30] On 1 August 2016, the association issued a letter to the 'Ketua Pusat Perkhidmatan Komuniti Kepong' and demanded that all information and correspondence pertaining to Kampung Chim Lee be forwarded to the association and seven days notice be given for any negotiations and/or meetings. Apart from that the association and/or the defendants had also repeatedly requested P1 to reply to the defendants' queries. Details and particulars of the agreement between the plaintiffs as well as details regarding P2 were requested several times. Matters pertaining to the fair compensation for the defendants were also escalated to P1.

[31] The association had also requested for the complete chronology relating to Lot 80782 from the Federal Territories Land and Mines Department as the defendants are claiming an interest and/or legitimate expectation and/or equity that must be satisfied based on, inter alia, their continued actual possession of Lot 80782 from the relocation in 1979 to date, while P1 only became the registered proprietor on 18 May 2016.

[32] During the same period, many events occurred which led to the lodging of several police reports by the defendants' representatives. The defendants on the other hand were trying to safeguard their interests and/or legitimate expectation and/or equity that must be satisfied with respect to Lot 80782 and/or the fair compensation due to the defendants pursuant to the same.

[33] It is alleged that subsequently, the plaintiffs commenced this writ action without addressing the defendants' interest and/or legitimate expectation and/or equity that must be satisfied with respect to lot 80782. According to the defendants, P1 and/or P2 had explicitly and/or implicitly acknowledged the defendants' interest and/or legitimate expectation and/or equity that must be satisfied with respect to Lot 80782. The defendants have alleged that P1 and/or P2 are estopped from changing their position and from alleging that the defendants are trespassers or squatters.

ISSUES TO BE TRIED

[34] The following are the issues to be tried:

(a) whether the defendants above named have any rights, ownership interest, legitimate expectation and/or equity that must be satisfied by P1 who is the registered owner of the land;

(b) whether P1 as the registered owner of the land has the right to demand the defendants to give and/or surrender vacant possession of the land to P1;

(c) whether P2 has locus standi to bring this action against the defendants;

(d) whether P2 is the beneficial owner of the land;

(e) whether P1 and/or P2 has/have rights to immediate possession of the land;

(f) whether P1 and/or P2 had explicitly and/or implicitly acknowledged the defendants' interest and/or legitimate expectations and/or equity that must be satisfied with respect to the land and whether P1 and/or P2 is/are estopped from asserting otherwise;

(g) whether as a result of the presence and/or occupation by the defendants on the land, P1 and/or P2 have suffered loss and damages and are unable to continue with the sale and purchase agreement dated 30 August 2016;

(h) whether the plaintiffs are entitled to the reliefs claimed in paragraph 15 of the amended statement of claim; and

(i) whether P1 has at any time given any permission, approval and/or consent to the defendants to occupy the land.

WITNESSES

[35] The witnesses who testified are as follows:

No	Name	Description	Witness	Witness Statement (WS)
1.	Zainuddin bin Muhamad	Pegawai Penilaian Jabatan Penilaian dan Pengurnsan Harta DBKL (P1)	PW1	PW1A
2.	Khairee Elrma bin Sulaiman	Manager of Liberty Triangle Sdn Bhd (P2)	PW2	PW2A
3.	Wai Weng Keong	Occupant of unit AP09 Kampung Chim Lee (15th defendant)	DW1	DW1A
4.	Lim Chong Sen	Eighth defendant-occupant of unit APOS Kampung Chim Lee	DW2	DW2A
5.	Lai Ah Yoke	Wife of Eighth-defendant occupant of unit APOS Kampung Chim Lee	DW3	DW3A
6.	Go Kim Peng	Non-resident-Secretary of the Kampung Chim Lee Association	DW4	DW4A

ANALYSIS AND CONCLUSION

[36] The sole determining issue is whether the defendants have any rights, ownership interest, legitimate expectation and/or equity that must be satisfied by P1 who is the registered owner of the land. Of course, it is undeniable that the defendants or their parents/grandparents had built the houses and other permanent brick/wooden structures on the land since the late 1970's. The local authority (P1) and the relevant utilities agencies were all along aware of the existence or presence of the defendants on the land. Indeed, water and electricity has even been supplied to the defendants. But the question is whether all of these mean that the defendants are lawfully occupying the land?

Or are they squatters? But it is of course necessary to ask who in law is a squatter?

[37] The definition of squatter is to be found in the classic case of *Mcphail v Persons, Names Unknown* [1973] Ch 447 which was quoted by Richard Malanjum JC (as he then was) in *Tjia Swan Nio v Ng Nyuk Moi & Ors* [1992] 2 MLJ 666; [1992] 3 CLJ Rep 713; [1992] 4 CLJ 2200 (HC) where he said (p 670 (MLJ); p 716 (CLJ)):

> In the case of *McPhail v Persons Unknown* [1973] 1 Ch 447 Lord Denning MR stated thus at p 456:
>
> > What is a squatter? He is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to justify or excuse his conduct. He may say that he was homeless and that this house or land was standing empty, doing nothing. But this plea is of no avail in law.

[38] The problems associated with the removal or eviction of squatters is no doubt a volatile and delicate issue and has huge societal implications coupled with direct social, domestic, financial, security and other ramifications to those who are affected by the eviction. This topic was comprehensively researched and eruditely discussed in an article by Assoc Professor Sharifah Zubaidah Syed Abdul Kader titled as 'Eviction of Unlawful Occupiers of Land in Malaysia — Judicial Responses and Policy', which is available at http://www.ssm.com/abstract = 2199758.

[39] Turning to the issue at hand, it is relevant to mention that Chim Lee Mining Co Ltd relocated the occupants of Lot 67619 to the present location in Kampung Chim Lee in early 1979. The notice dated 2 January 1979 (pp 82 and 94 Bundle B) makes it clear to the occupants that they are being relocated to the land and that the Chim Lee Mining Co Ltd would apply to the government to allocate suitable land for the occupants, *but they gave no guarantees that this would take place.* They made it clear in the notice and said, 'Walaubagaimanapun, pihak syarikat *kami tidak menjamin penduduk yang terjejas mesti mendapat peruntukan tanah kerajaan*'. Thus, from the outset, the occupants would have known that an allocation of land from the government was not at all guaranteed. Of course, there is no evidence that Chim Lee Mining Co Ltd made any effort to get any allocation of land for the occupiers of Lot 80782.

[40] But I do think that if no effort was made by Chim Lee Mining Co Ltd then that would be lamentable, but it would not add or detract from the status of those occupying the land. And so the question is; *what was/is their status vis a vis the land.* There is no dispute that the land was alienated to P1 on 18 May

2016. It is significant that from the beginning, the occupants of the land were described in the contemporaneous document as squatters ('penduduk setinggan').

[41] For example, in a letter dated 17 April 1987 from the 'Direktorat Penguatkuasaan' of P1 to one, Wai Keow @ Wai Kim Choong of No 8 Kampung Chim Lee, the subject heading was *'Bekalan elektirk kebangunan di atas Kampung Setinggan Wilayah Perseketuan.'* (p 104 B). In a letter dated 6 January 1986 from the Kementerian Wilayah Persekutuan to the Pengarah, Jabatan Bekalan Air, Kuala Lumpur (p 105 B), the letter refers to 'Sokongan Pemasangan Paip Air dari ... ke Kawasan Setinggan ...'. In this regard, there is no evidence whatsoever that the defendants or any of them paid any quit rent to the Pentadbir Tanah dan Galian Wilayah Persekutuan or any rent or payment to any other party or entity. And so, the occupants were using the land for free. After relocating from Lot 67619 to the land, the defendants just proceeded to build their houses or other structures and stayed on the land until the present moment.

[42] In the meanwhile, the land, which was obviously owned to the state, was alienated to P1 on 18 May 2016. P1 is now the registered owner and pursuant to s 340 of the National Land Code ('the NLC'), they obtained an indefeasible title as none of the vitiating grounds have been raised bv the defendants.

[43] There was a suggestion by counsel for the defendants that some of the defendants were issued with TOL (see ss 65–69 of the NLC), but there was no evidence of any TOL having been issued to any of the defendants in respect of Lot 80782. Of course, there is some scant evidence that TOL was issued to one occupant when he was on Lot 676619. In my view, even if there was any TOL which had been issued for the land, it does not translate into any right or interest in the land, going beyond the TOL itself. At any rate, there was no evidence of any TOL for the land to begin with. And so the TOL issue must be ignored.

STATUS OF THE DEFENDANTS VIS A VIS THE LAND

[44] It is necessary now to go back to the primary question: what is the status of the defendants vis a vis the land. In this regard, it was put to DW1 that the defendants do not have a right to occupy the land (see NOE p 82 paras 18–32) and DW1 testified during cross-examination that:

> Q: Saya cadangkan kepada Encik Wai berdasarkan kepada dokumen di *ms 104,* ianya menyatakan bahawa *Kampung Chim Lee merupakan satu kawasan setinggan* yang telahpun diberikan bekalan elektrik, setuju ataupun tidak?

Court:

You know the word 'setinggan' 1s squatters, you have to explain, squatters.

Interpreter:

Yang tidak sahkan?

PC 1 (RK Sharma):

Tidak sah, no right to be on the land.

Interpreter:

Yes.

[45] The plaintiffs say that the defendants are illegally occupying the land as squatters. My starting point is that I agree that the defendants are squatters. But I am reluctant to agree that they occupied the land illegally. In this regard, they entered the land in the 1970s, with the tacit acquiescence of the state, P1 and utility providers (water and electricity). Thus, I cannot say that they entered the land illegally. The evidence shows that the defendants' entry into the land in the 1970s was procured or facilitated by Chim Lee Mining Co Ltd. But there is no evidence of what steps were taken thereafter to ensure that the defendants are given an allocation of land by the government. But it is necessary to emphasise that all along, there was no representation from anyone in authority that the defendants would be allocated land by the government.

[46] At any rate, there was no follow up by the defendants. They went into hibernation and swung into action only recently, that is, when they received notices/letters from P1 and P2 of and concerning the affordable housing project etc. In this regard, the defendants sent various letters and even went to the extent of registering themselves as a society with the Registrar of Societies.

[47] On 4 January 2016 P1 took out an advertisement under r 5 of the Federal Territory Planning (Development) Rules 1970 (p 110 B) giving notice of the development that was soon to take place on the land. The notice clearly states that the development will comprise of the following:

(i) 2 block 29 storey affordable apartments (638 units) with consisting of 8th storey carpark podium, commercial area and communal facilities.

(ii) 2 block 27th and 26th storey condominium (424 units) with consisting of 7th-storey carpark podium and communal facilities.

(iii) I block 5 storey community centre with communal facilities and I storey basement car park.

(iv) 73 units shop offices.

[48] There were also various letters that were sent by P2 to the defendants, inviting them for meetings wherein offers were made by P2 (on a without prejudice basis) to the defendants so as to facilitate their evacuation from the land and to give them an opportunity to be given affordable housing once the project is completed. But nothing crystallised out of these efforts by P2 as the developer of the project.

[49] During the trial, it became clear that what the defendants were essentially seeking is only adequate compensation. In this regard, it was established during cross-examination that the defendants are not claiming for ownership of the land. This is seen in the following answers given by DW1:

> Q: Encik Wai juga akan bersetuju dengan saya bahawa Encik Wai bertujuan untuk mendapatkan hakmilik di dalam tindakan ini?
>
> A: Bukan. — see NOE p 84 paras 18–20

[50] The following answers by DW1 showed quite clearly that the defendants did not make a claim for compensation in respect of the land:

> Q: 'Encik Wai juga akan bersetuju dengan saya bahawa Encik Wai tidak mempunyai apa-apa tuntutan untuk pampasan di dalam tindakan ini, di Mahkamah?
>
> A: Ya, tidak saman Plaintif' — see NOE p 84 paras 14–16 and
>
> Q: Encik Wai setuju tak Encik Wai tidak membuat sebarang tuntutan terhadap LIBERTY TRIANGLE untuk sebarang pampasan, ya atau tidak?
>
> A: Setuju.
>
> (see NOE p 89 paras 31–33)

[51] This position is fortified by the evidence of DW2 who testified during cross-examination that the defendants are willing to vacate the land, if they are paid compensation:

> Q: Jadi Encik Lim akan bersetuju dengan saya bahawa Encik Lim tidak mempunyai pengetahuan mengenai status Tanah yang diduduki oleh penghuni-penghuni ini?
>
> A: Saya tidak tahu kerana Syarikat Chim Lee yang suruh kita pindah sini dan tidak boleh jual Tanah ini. *Jika ada orang hendak pakai, dia akan bayar kita pampasan dan kita akan beri batik.*
>
> (see: NOE p 106 paras 19–23) (Emphasis added.)

[52] In the words of DW4, the defendants are not against the project but they just wanted adequate compensation and they will leave. DW4 testified during cross-examination that:

(a) 'bukan mereka mahu tanah, bukan mahu hakmilik, cuma mereka mahu ada sebuah rumah untuk mereka boleh duduk dan pampasan yang wajar' (see NOE p 129 paras 3–7);

(b) 'bukan mereka mahu minta Geran' (see NOE p 129 para 17); and

(c) 'bukan dia hendak minta dia punya Title, Geran' (see NOE p 130 paras 3–9).

[53] In my view, the inference that the defendants are squatters, is irresistible. But I must say that their initial entry onto the land in the 1970s was not surreptitious or contrived. It was facilitated by Chim Lee Mining Co Ltd, with the tacit or express acquiescence of the authorities and utility agencies. And this would include P1 as well, in their capacity as the local authority. Thus, in view of the answers that were given by the witnesses who testified for the defendants, it is quite clear that the defendants had abandoned their defence of 'rights, ownership, interest, legitimate expectation and/or equity' with respect to the land. Hence, whichever way one looks at the situation, there is no other label that describes the defendants other than as squatters as all the contemporaneous documentary evidence points to the fact the defendants are squatters.

[54] They have no claim to title or any registrable interest over the land. And being squatters, they have no right either in law or in equity, see: *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 (FC). Further under s 341 of the NLC, no claims may be made against a registered land owner based on adverse possession. Section 341 of the NLC reads as:

> Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Act 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

[55] Further under s 48 of the NLC, there shall be no adverse possession claims against the state. It reads as follows:

> No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.

[56] P1 is the registered owner of the land with effect from 18 May 2016 and pursuant to s 89 of the NLC, the name on the register is conclusive proof of ownership. It reads as follows:

> Every register document of title duly registered under this Chapter shall, subject to

the provisions of this Act, be conclusive evidence — A

(a) that title to the land described therein is vested in the person or body for the time being named therein as proprietor; and

(b) of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body, so far as the same are required by any provision of this Act to be specified or referred to in that document. B

[57] As I mentioned earlier, there is no counterclaim by the defendants for any relief in equity. In this regard, on the question as to whether the defendants have any rights, ownership, interest, legitimate expectation and/or equity that must be satisfied by P1 who is the registered owner of the said land, it is significant that during the trial, the defendants (*through the answers given by their witnesses during examination*) abandoned their defence that they have rights, ownership, interest, legitimate expectation and/or equity on the said land. C D

[58] It is important to emphasise, at risk of repetition, that P1 is the registered owner of the land and the transfer in favour of P1 was registered on 18 May 2016 as reflected in the issue document of title (see pp 1–3 B). The registration of P1's ownership on the land confers indefeasible title or interest except in circumstances set out in s 340(2) of the NLC. The defendants have not asserted that P1's ownership is defeasible pursuant to s 340(2) of the NLC. E F

[59] And, the fact that the defendants had been occupying the land over a long period of time and had done substantial improvements to the land and/or may have had a TOL over the land and/or had spent money to fortify the land does not per se, confer any rights on the occupants or users of the land. G

[60] In this regard, it is useful to refer to the case of *Hong Lim Timber Industries Sdn Bhd v Pentadbir Tanah Pejabat Daerah dan Tanah Daerah Timur Laut Pulau Pinang* [2017] MLJU 408, High Court where the plaintiff had been in occupation of state land (reclaimed from the sea) and had been using the land for about 60 years without interruption. The plaintiff was even given a TOL for the land at one time. The state decided to develop the land and invited bidders. The successful bidder asked the plaintiff to surrender vacant possession. They refused. The plaintiff claimed that they had rights over the land based on equitable estoppel. In that case, Lim Chong Fong J said at pp 1, 3 and 6: H I

> The plaintiff had reclaimed the Property at its costs and thereafter occupied and continuously utilised the property in the past 60 plus years free from interference. At one point in time, the plaintiff was even issued a temporary occupation license for the property that has since expired.

A ...

According to the plaintiff, it has legitimate expectation to continue to occupy the property; thus the respondent's notice is unlawful by reason that it is discriminatory, unreasonable and/or issued mala fide. It merely served the interest of TVDSB.

B ...

[21] On the facts of this appeal before me, it is plain that the property has at all times never been alienated and duly registered in the plaintiff's name as the owner. There was a temporary occupation license issued to the plaintiff some time ago but that had lapsed. It is settled law that the plaintiff is in the circumstances therefore a C squatter and is committing trespass on the property.

[22] I am mindful that *the plaintiff spent effort and money to reclaim the land that formed the property but unless that property is subsequently alienated and duly registered in favour of the plaintiff, it is still state land by virtue of the definition of land in s 5 of the NLC that includes land covered by water read together with ss 40 and 78(3) of the* D *NLC. The plaintiff had merely filled up and raised the level of the land that was submerged in the sea belonging to the state. By so doing, it neither ipso facto make the plaintiff the owner of it nor confer it with the right to claim legal ownership thereto. In other words, the plaintiff reclaimed the property at its own risks.* Consequently the plaintiff erected the structures and building on the property at its own risks too. The E structure and building become fixtures of the property that belonged to the State as well.

[23] It is equally settled law that the plaintiff cannot therefore claim equitable estoppel notwithstanding the plaintiff had further occupied the property for a considerable time free from interference including eviction. By s 48 of the NLC, the F plaintiff remains a squatter. The defendant is hence empowered to take action to evict the plaintiff for trespass including taking criminal proceedings against the plaintiff under s 425 of the NLC. Put simply, the can be no legitimate expectation on the part of the plaintiff whatsoever in respect of the property at law.

G **[61]** In Malaysia there is no concept of 'adverse possession' which entitles the user or occupant to assert any legal or equitable rights. In *Kabra Holdings Sdn Bhd v Ahmad Shahlan & Ors & Other Persons Unknown* [1992] 2 CLJ Rep 609 (HC) Lim Beng Choon J said at p 616 'Adverse possession regardless of the period can never give the defendants the right to occupy the disputed land H pursuant to ss 48 and 341 of the National Land Code'.

[62] I turn now to the plea of proprietary estoppel. As I said earlier, there was no counterclaim for any relief in equity. Thus, even if this aspect of the defence is to be considered, the court is not in a position to grant any reliefs sans any I counterclaim. This may be contrasted with the case of *Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors* [2000] 4 MLJ 503 (CA) where the Court of Appeal upheld the decision of the High Court which awarded compensation to the defendants who were alleged to be squatters. The defendants in that case claimed that they were 'lawful occupants of the land as

licensees coupled with equity'. The counterclaim by the occupiers in the case of *Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors* [1998] MLJU 378 (HC) was as follows:

(a) A declaration that the issuance of title to STLR Sdn Bhd and the subsequent transfer to the plaintiff is null and void.

(b) In the alternative, declarations as follows:

(i) That the plaintiff is bound by equity (which exists between the predecessors-in-title of the said land and the defendants) when the land held under HS(D) 66601 Lot PT 2473, Mukim Setapak, Daerah Wilayah Persekutuan, Negeri Wilayah Persekutuan was transferred from the predecessors-in-title to the plaintiff.

(ii) That the plaintiff is bound to satisfy the equity existing in favour of the defendants. The equity consists of the efforts expended by the defendants on their land and houses, current market value of the defendants' houses and the cost of relocating the defendants.

(iii) That the defendants are entitled to the exclusive possession of the land occupied by them so long as the plaintiff has not satisfied the equity existing in favour of the defendants by paying to the defendants, reasonable damages and compensation which shall be assessed.

(c) An order for compensation and damages equivalent to the value of the equity which the plaintiff is bound to pay to the defendants.

(d) Costs of the action be borne by the plaintiff.

(e) Further reliefs which the Court thinks fit.

[63] Thus, although the registered owner in that case ultimately obtained orders of vacant possession, the trial judge found as a fact that the defendants were not squatters simpliciter but were in occupation of the land as licensees and with the consent of the state authority that they could occupy or continue to occupy the land. Thus, the order of vacant possession in favor of the registered owner was subject to the owner paying compensation to the occupants for construction and renovation of their respective houses.

[64] The distinguishing feature in that case was that there was compelling evidence (see pp 505–506 of the judgment) indicating that the State Executive Committee of Selangor had given approval to alienate the land to the Malay occupants of the land. However, in the present case, there was no such evidence. Instead the evidence points to the fact that there were no assurances or representations and all along the defendants or the previous occupants were described as squatters (*setinggan*).

[65] Indeed, it is material to note that the Chim Lee Mining Co Ltd had

themselves unambiguously stated in their written communication to the defendants that there is no guarantee that they would get any land from the government. Thus, one of the important elements of proprietary estoppel is glaringly missing, namely 'assurance' or 'representation'. Other than tacit acquiescence by the authorities, including by P1 (in their capacity as the local authority and not as landowner) there was no express representation or any assurance that defendants would be given any land or that they could occupy the land in perpetuity. In the absence of any evidence of 'representation' or 'assurance', the plea of proprietary estoppel falls to the ground.

[66] In this regard, it is relevant to refer to the principle that was recognised by the House of Lords in *Thorner v Major and others* [2009] 3 All ER 945 at para 29 where Lord Walker, posited that the three main elements for proprietary estoppel are, first, 'representation made' or 'assurance' made to the claimant; second, 'reliance on it' and thirdly, 'detriment in consequence of his (reasonable) reliance'. The element for a plea of proprietary estoppel was also comprehensively in *Holee Holdings (M) Sdn Bhd v Chai Him & Ors* [1997] 4 MLJ 601 (HC) (per Augustine Paul JC — as he then was). As stated earlier, in this case there was no representation or assurance of any sort. Indeed, the defendants (or their predecessors) were informed that there was no guarantee that they would be given any land by the government.

[67] Thus, the long and continued usage of the land per se confers absolutely no legal or equitable rights on the occupier. In *Cahaya Ideal (M) Sdn Bhd v Orang2 Yg Mengenali Diri Sbg 'Ponga' (Poongavanam a/l Vadivelu) & Ors* [1999] MLJU 125 (HC) (per Abdul Malik Ishak J) said at p 18 that:

> In my judgment, the fact that the defendants have been in occupation of that plot of land marked as 'C31' in the layout plan for the last 20 years would be irrelevant and immaterial as it did not confer any interests on the defendants nor did it improve the defendants' interests on that portion of land as claimed by the defendants. In short, an alienated land cannot be obtained by adverse possession under the

[68] In law, the position of squatters is well settled. It is tnte that squatters, do not have any right either in law or in equity in respect of the land. In *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 (FC) Raja Azlan Shah CJ said at p 314:

> In our opinion there is one issue which lies at the heart of this case. It is whether the appellants have a cause of action against the respondents. The answer is obvious. It is clear beyond doubt that they cannot succeed because they are squatters. *Squatters have no right either in law or in equity.* (See *McPhail v Persons Unknown* (CA)). It does not lie in their mouths to assert that they used and occupied the land as squatters.

[69] At p 314 the Federal Court said:

> *It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers* (see *Grafton v Griffin* 39 ER 130). We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into, his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

[70] In *Lee Loy & Ors v Poh Kam Sang & Anor* [2017] MLJU 1966; [2018] 3 MLJ 240 (CA) (per Mary Lim JCA) at p 3 which followed the Federal Court decision of *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* said:

> Third, the court should not protect squatters, as decided by the Federal Court in *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313.

[71] In *Cahaya Ideal (M) Sdn Bhd v Orang2 Yg Mengenali Diri Sbg 'Ponga' (Poongavanam a/l Vadivelu) & Ors* [1999] MLJU 125, High Court (per Abdul Malik Ishak J) stated at p 16:

> In *Punca Klasik Sdn Bhd v Foh Chong & Sons Sdn Bhd & Ors* [1996] MLJU 471; [1998] 1 CLJ 601 at p 622 the court said that 'squatters have no legal standing in law or in equity and they can be ousted at will'. In the context of a trespasser, one must always bear in mind the owner's right to immediate possession. By 'owner', I meant the registered owner and this must necessarily be the present plaintiff.

[72] Turning now to P2, it is my view that they definitely have an interest in the land by virtue of SPA as their legal and rights commenced will be affected if the defendants continue to remain on the land — *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 (PC) (per Lord Diplock) at pp 55–56:

> It has been sometimes said as in *Moser v Marsden* [1892] 1 Ch 487 and in *In re IG Farbenindustrie AG* [1944] Ch 41 that a party may be added if his legal interests will be affected by the judgment in the action but not if his commercial interests only would be affected.
>
> While Their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between 'legal' and 'commercial' interests helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

[73] In so far as the provision of utilities such as water and electricity is concerned, it is clear that of itself does not establish that the occupants were legally occupying the land. In *Lee Loy & Ors v Poh Kam Sang & Anor* [2017] MLJU 1966; [2018] 3 MLJ 240 (CA) (per Mary Lim JCA) said at p 3:

> the provision of electricity and water supplies does not amount to acknowledgment of lawful occupation of the subject land.

[74] In so far the discussions between P1, P2 and the defendants and offers made by P1 and/or P2 prior to the commencement of the present suit are concerned, these were clearly carried out on a without prejudice basis. They are immaterial. In *Hong Lim Timber Industries Sdn Bhd v Pentadbir Tanah Pejabat Daerah dan Tanah Daerah Timur Laut Pulau Pinang* [2017] MLJU 408 (HC) (per Lim Chong Fong J) at pp 6–7 the court opined that:

> [24] It is immaterial that TVDSB had *offered to pay compensation to the plaintiff for the property as well as the structures and buildings thereon as it was clearly made on an ex-gratia and without prejudice basis.* It might have been different if the Plaintiff had accepted the offer where a binding contract then comes into existence for the Plaintiff to take action if TVDSB eventually refuses to pay. Nevertheless, that will have to be an action in personem against TVDSB.

[75] During the trial, P2 had established that they suffered out of pocket expenses in the sum of RM43,824 due to the delay in the implementation of the project which in turn was caused by the refusal of the defendants to move out of the land. But P2 did not adduce any evidence of any other losses or damages which was purportedly caused by the delay in the commencement of the project.

[76] In the result, I would state in so far as the issue of liability is concerned, the plaintiffs have clearly established that P1 is the registered owner of the land and is therefore entitled to immediate vacant possession of the land which they own.

[77] Further, P2 as the contracting party and purchaser under the SPA and having paid the requisite deposit towards the purchase and development of the land in the manner as envisaged under the SPA, has the requisite locus standi to file this action in conjunction with P1 (the legal owner) as clearly P2's legal and commercial interests are affected by the continued presence of the defendants on the land. Of course, P2 didn't stumble upon the presence of the defendants. Rather, P2 went in with their 'eye open'. Indeed, the SPA itself makes it abundantly clear that P2 have a contractual objection to do the needful to clear the land, pay appropriate compensation and demolish the structures at their own cost and expense. Hence, the demolition costs cannot be shifted to the defendants as P2 has taken it upon themselves to foot the bill.

[78] Next, in so far as losses caused by the delay in the project is concerned, P2 adduced no evidence whatsoever as to what their losses are, as a result of the delay. It was argued that the loss can only be ascertained once they obtain vacant possession. I am not sure why that has to be the case as there are credible methods of computing projected losses, even though vacant possession has not been obtained.

[79] In any event, as there was no request nor a directive for a bifurcated trial on liability and quantum, I held the view that P2 has not established any losses and as such, no damages whatsoever can be awarded as general damages, exemplary or aggravated damages. The only damage sustained by P2 is the sum of RM43,824 which are the expenses incurred as a result of delay in the implementation of the development project, which was not contested by the defendants.

[80] As I said, there was no counterclaim by the defendants for any equitable reliefs of the type that was awarded in the case of *Sentul Murni Sdn Bhd v Ahmad Amiruddin bin Kamaruddin & Ors* [2000] 4 MLJ 503 (CA) where the land owner was granted vacant possession, but which was conditional on payment of compensation to the occupants who were able to credibly prove that they were licensees coupled with an equity.

[81] Here, quite apart from there being no counterclaim, the defendants were also not able to establish any 'assurance' or 'representation' such as may possibly establish a licensee to occupy the land in perpetuity. The contemporaneous evidence suggests quite convincingly that the Chim Lee Mining Co Ltd gave 'no guarantee' that the settlers would be given any land by the government. Further, the settlers on the land were all along described as 'squatters'. Of course, labels are not conclusive. But here the label 'squatter' is an apt description, both factually and legally.

THE OUTCOME

[82] For the reasons as stated and discussed above and based on the relevant principles of law which are applicable, the claim by P1 and P2 is hereby allowed. The orders which I shall make are as follows:

(a) Satu deklarasi bahawa Defendan-defendan sama ada melalui mereka sendiri atau ejen-ejen, pekerja-pekerja dan/atau wakil- wakil mereka tidak mempunyai hak, hakmilik dan/atau kepentingan yang mempunyai prioriti terhadap Plaintif-Plaintif;

(b) Defendan-defendan dikehendaki untuk mengosongkan dan/atau menyerahkan milikan kosong tanah yang dikenali sebagai Lot 80782,

Kampung Chiam Lee, Muki m Batu Kuala Lumpur kepada Plaintif-Plaintif dalam tempoh tiga (3) bulan dari tarikh perintah Mahkamah ini;

(c) Defendan-Defendan dikehendaki untuk merobohkan dan membuang semua struktur tidak boleh alih dan boleh alih yang berada di atas tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur dalam tempoh tiga (3) bulan dari tarikh perintah Mahkamah ini;

(d) Sekiran ya Defendan-Defendan gagal, enggan dan/atau secara cuai tidak mengosongkan dan/atau menyerahkan milikan kosong tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur kepada Plaintif-Plaintif dan merobohkan dan membuang semua struktur tidak boleh alih dan boleh al ih yang berada di atas tanah yang dikenali sebagai Lot 80782, Kampung Chiam Lee, Mukim Batu Kuala Lumpur dalam tempoh tiga (3) bulan, Plaintif-Plaintif dibenarkan untuk melaksanakannya secara sendiri;

(e) Bagi tujuan menguatkuasakan prayer (b) atas satu perintah bahawa Defendan-Defendan sama ada melalui mereka sendiri atau pekerja-pekerja dan atau ejen-ejen mereka dihalang daripada secara tidak sah menghuni tanah tersebut atau mana-mana bahagian tanah tersebut atau sebaliknya menghalang, menyekat dan/atau menggangu apa-apa kerja Plaintif-Plaintif atau ejen yang diberi kuasa Plaintif-Plaintif atas tanah tersebut;

(f) Satu perintah bahawa Defendan, sama ada melal ui mereka sendiri atau pekerja-pekerja dan/atau ejen-ejen mereka dihalang daripada memasuki apa-apa kaveat atau sebaliknya menghalang, menyekat dan/atau menggangu apa-apa urusan tanah tersebut;

(g) Gantirugi berjumlah RM43,824.00 kepada P2 dibenarkan dengan faedah 5% setahun keatasnya dari 20hb Mac 2018 sehingga bayaran atau 'realization';

(h) Defendan-defendant membayar kos sebanyak RM30,000.00 (tertakluk kepada 4% allokatur) kepada P1 dan kos sebanyak RM10,000.00 (tertakluk kepada 4% allokatur) kepada P2.

Order accordingly.

Reported by Ashok Kumar